

Comptroller of the Currency, Treasury

§ 4.35

§ 4.34 Where to submit a request.

(a) *A request for non-public OCC information.* A person requesting information under this subpart, requesting authentication of a record under § 4.39(d), or submitting a notification of the issuance of a subpoena or compulsory process under § 4.37, shall send the request or notification to: Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Director, Litigation Division.

(b) *Combined requests for non-public and other OCC information.* A person requesting public OCC information and non-public OCC information under this subpart may submit a combined request for both to the address in paragraph (a) of this section. If a requester decides to submit a combined request under this section, the OCC will process the combined request under this subpart and not under subpart B of this part (FOIA).

(c) *Request by government agencies.* A request made pursuant to § 4.37(c) must be submitted:

(1) In a civil action, to the Director of the OCC's Litigation Division at the Washington office; or

(2) In a criminal action, to the appropriate district counsel or the Director of the OCC's Enforcement and Compliance Division at the Washington office.

[60 FR 57322, Nov. 15, 1995, as amended at 64 FR 29216, June 1, 1999]

§ 4.35 Consideration of requests.

(a) *In general—(1) OCC discretion.* The OCC decides whether to release non-public OCC information based on its weighing of all appropriate factors including the requestor's fulfilling of the requirements enumerated in § 4.33. Each decision is at the sole discretion of the Comptroller or the Comptroller's delegate and is a final agency decision. OCC action on a request for non-public OCC information exhausts administrative remedies for discovery of the information.

(2) *Bases for denial.* The OCC may deny a request for non-public OCC information for reasons that include the following:

(i) The requester was unsuccessful in showing that the information is relevant to the pending matter;

(ii) The requester seeks testimony and the requestor did not show a compelling need for the information;

(iii) The request arises from an adversarial matter and other evidence reasonably suited to the requester's need is available from another source;

(iv) A lawsuit or administrative action has not yet been filed and the request was made in connection with potential litigation; or

(v) The production of the information would be contrary to the public interest or unduly burdensome to the OCC.

(3) *Additional information.* A requester must submit a complete request. The OCC may require the requester to provide additional information to complete a request. Consistent with the purposes stated in § 4.31, the OCC may inquire into the circumstances of any case underlying the request and rely on sources of information other than the requester, including other parties.

(4) *Time required by the OCC to respond.* The OCC generally will process requests in the order in which they are received. The OCC will notify the requester in writing of the final decision. Absent exigent or unusual circumstances, the OCC will respond to a request within 60 days from the date that the OCC receives a request that it deems a complete request. Consistent with § 4.33(a)(2), the OCC weighs a request to respond to provide information in less than 60 days against the unfairness to other requesters whose pending requests may be delayed and the burden imposed on the OCC by the expedited processing.

(5) *Notice to subject national banks.* Following receipt of a request for non-public OCC information, the OCC generally notifies the national bank that is the subject of the requested information, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue.

(b) *Testimony.* (1) The OCC generally will not authorize a current OCC employee to provide expert or opinion evidence for a private party.

(2) The OCC may restrict the scope of any authorized testimony and may act to ensure that the scope of testimony given by the OCC employee adheres to the scope authorized by the OCC.